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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re NICOLE M., a Person Coming Under the
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

GEORGE R.,

Defendant and Appellant.

F077969

(Super. Ct. No. JD137698-00)

OPINION

APPEAL from an order of the Superior Court of Kern County. Raymonda B. Marquez, Judge.

Rebekah S. Sass, under appointment by the Court of Appeal, for Defendant and Appellant.

Margo A. Raison, County Counsel, and Judith M. Denny, Deputy County Counsel, for Plaintiff and Respondent.

Kimball J.P. Sargeant, under appointment by the Court of Appeal, for Minor.

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In August 2017, then seven-year-old Nicole M. was living with her mother, Briana M. (mother), her mother's boyfriend Sergio S. (Sergio), and their two sons. The Kern County Department of Human Services (Department) initiated these dependency proceedings that month, based on domestic violence between mother and Sergio, and mother's substance abuse.¹ Nicole's father, George R. (father),² who was the noncustodial parent, asked that Nicole be placed with him, but the juvenile court, after taking dependency jurisdiction over Nicole and her half-brothers, instead returned them to mother's custody with the provision of family maintenance services.

Mother, however, relapsed and the Department filed a petition in March 2018 to remove the children from her custody. Father again asked that Nicole be placed with him pursuant to Welfare and Institutions Code section 361.2, subdivision (a).³ Following a contested hearing on father's request, the juvenile court removed the children from mother's custody, denied father's request for placement of Nicole after finding the placement would be detrimental to her emotional well-being, and ordered reunification services for mother, mother's boyfriend, and father.

On father's appeal from these orders, he challenges the juvenile court's denial of his request for placement. He contends the case turns on the interpretation of section 361.2, subdivision (a),⁴ and argues the statute requires placement with a

¹ The petition also alleged mother had been incarcerated and could not arrange for Nicole's care. This allegation, however, was dismissed without prejudice at the jurisdiction hearing.

² The juvenile court found that both Sergio and George were Nicole's presumed fathers.

³ Undesignated statutory references are to the Welfare and Institutions Code.

⁴ Section 361.2, subdivision (a) provides, in relevant part: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the

nonoffending, noncustodial parent unless there is evidence the parent's conduct would make the placement detrimental. He further argues the juvenile court impermissibly shifted the burden of proving a lack of detriment to him and there was insufficient evidence of detriment. The Department advised us that it did not oppose father's appeal, as it had taken the position below that Nicole should be placed with father and jurisdiction terminated as to her. Nicole, however, filed a respondent's brief, arguing we should affirm the juvenile court's order.

On February 13, 2019, while this appeal was pending, the juvenile court held a review hearing pursuant to section 366.21, subdivision (e). At that hearing, the juvenile court found out-of-home placement was no longer appropriate and necessary, placed Nicole with mother with the provision of family maintenance services, and ended father's services.

By an April 22, 2019 letter, this court invited the parties to file supplemental briefing on (1) the propriety of taking judicial notice of the February 13, 2019 orders, and (2) whether this appeal is now moot. Both father and Nicole filed responses. Neither party objects to our taking judicial notice of the February 13, 2019 orders. Moreover, both parties recognize the appeal is moot because it is impossible for us to grant father effective relief.

“An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way. [Citation.] An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citations.] On a case-by-case basis, the reviewing court decides

child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”

whether subsequent events in a dependency case have rendered the appeal moot and whether its decision would affect the outcome of the case in a subsequent proceeding.” (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054-1055.)

We cannot render effectual relief in this case. Section 361.2, subdivision (a), is only applicable where a dependent minor is removed from the custodial parent’s care. (See, e.g., *R.S. v. Superior Court* (2007) 154 Cal.App.4th 1262, 1270 [“ ‘section 361.2 deals specifically with the removal of the child from a custodial parent when there also exists a noncustodial parent’ ”].) Since there is no longer an order removing Nicole from her custodial parent under section 361, father’s existence as a noncustodial parent and his desire to assume custody of Nicole no longer entitles him to custody under section 361.2, subdivision (a). Thus, even if this court were to reverse, the juvenile court could not place Nicole with father under section 361.2, subdivision (a).

Father, however, asks us not to deem his appeal moot, as it falls under an exception to the mootness doctrine, namely legal disputes that are capable of repetition yet evading review. He asserts the interpretation of section 361.2 falls within this exception because there is a reasonable expectation he will be subjected to the same action should mother relapse and Nicole be removed from her custody.⁵ Nicole responds the exception does not apply because (1) the denial of father’s request for placement is not inherently of a duration “too short to be fully litigated” again, and (2) it is doubtful father would be subjected to exactly the same action should Nicole be removed from mother, because father could again request custody and his request would be governed by the circumstances in existence at that time.

⁵ Father asserts the United States Supreme Court has recognized an exception to the mootness doctrine if “ ‘(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.’ ” (*Turner v. Rogers* (2011) 564 U.S. 431, 439-440.)

We agree with Nicole. Accordingly, we decline to exercise our inherent discretion to resolve an otherwise moot issue. (*In re N.S.* (2016) 245 Cal.App.4th 53, 59.) In so declining, we take judicial notice of the juvenile court's February 13, 2019 minute order. (Evid. Code, §§ 455, 459.)

DISPOSITION

The appeal is dismissed as moot.

SNAUFFER, J.

WE CONCUR:

DETJEN, Acting P.J.

DE SANTOS, J.